

SECOND REGULAR SESSION

SENATE BILL NO. 1159

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GIBBONS.

Read 1st time February 19, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

3977S.04I

AN ACT

To repeal sections 191.225 and 595.045, RSMo, and to enact in lieu thereof three new sections relating to forensic examinations.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 191.225 and 595.045, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 191.225, 595.045,
3 and 595.107, to read as follows:

191.225. 1. [The department of health and senior services shall make
2 payments to appropriate medical providers, out of appropriations made for that
3 purpose, to cover the charges of the forensic examination of persons who may be
4 a victim of a sexual offense if:

5 (1) The victim or the victim's guardian consents in writing to the
6 examination;

7 (2) The report of the examination is made on a form approved by the
8 attorney general with the advice of the department of health and senior services;
9 and

10 (3) The report of the examination is filed with the prosecuting attorney
11 of the county in which the alleged incident occurred.] **For purposes of this
12 section, the following terms mean:**

13 (1) "Appropriate medical provider", any licensed nurse,
14 physician, or physician assistant, and any institution employing
15 licensed nurses, physicians, or physician assistants; provided that such
16 licensed professionals are the only persons at such institution to
17 perform tasks under the provisions of this section;

18 (2) "Evidentiary collection kit", a kit used during a forensic

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 **examination that includes materials necessary for appropriate medical**
20 **providers to gather evidence in accordance with the forms and**
21 **procedures developed by the attorney general for forensic**
22 **examinations;**

23 **(3) "Forensic examination", an examination performed by an**
24 **appropriate medical provider on a victim of an alleged offense included**
25 **under chapter 566, RSMo, to gather evidence for the evidentiary**
26 **collection kit;**

27 **(4) "Medical treatment", the treatment of all injuries and health**
28 **concerns resulting directly from a patient's sexual assault or**
29 **victimization.**

30 **2. The appropriate medical provider shall file [the] a forensic report of**
31 **the examination with the prosecuting attorney of the county in which the**
32 **alleged offense occurred** within three business days of completion of the
33 forensic exam.

34 **[2.] 3. A minor may consent to examination under this section. Such**
35 **consent is not subject to disaffirmance because of minority, and consent of parent**
36 **or guardian of the minor is not required for such examination. The appropriate**
37 **medical provider making the examination shall give written notice to the parent**
38 **or guardian of a minor that such an examination has taken place. If the**
39 **appropriate medical provider reasonably believes the offender could be**
40 **a parent or guardian of the victim and the victim is a minor under the**
41 **age of eighteen, the medical provider shall only be required to provide**
42 **written notice to the nonoffending parent or guardian of the**
43 **examination.**

44 **[3.] 4. The attorney general, with the advice of the department of health**
45 **and senior services, shall develop the forms and procedures for gathering**
46 **evidence during the forensic examination under the provisions of this**
47 **section. Separate forms and procedures shall be developed for victims**
48 **age fourteen and younger and victims age fifteen and older. The**
49 **department of health and senior services shall develop a checklist for appropriate**
50 **medical providers to refer to while providing medical treatment to victims of a**
51 **sexual offense. Separate checklists shall be developed for victims age**
52 **fourteen and younger and victims age fifteen and older.**

53 **[4.] 5. Evidentiary collection kits shall be developed and made available,**
54 **subject to appropriation, to appropriate medical providers by the highway patrol**

55 or its designees and eligible crime laboratories. Such kits shall be distributed
56 with the forms and procedures for gathering evidence during forensic
57 examinations of victims of a sexual offense to appropriate medical providers upon
58 request of the provider, in the amount requested, and at no charge to the medical
59 provider. All appropriate medical providers shall, with the written consent of the
60 victim, perform a forensic examination using the evidentiary collection kit and
61 forms and procedures for gathering evidence following the checklist for any
62 person presenting as a victim of a sexual offense.

63 [5.] **6.** All appropriate medical provider charges for eligible forensic
64 examinations shall be billed to and paid by the department of [health and senior
65 services] **public safety as provided in section 595.107, RSMo.** No
66 appropriate medical provider conducting forensic examinations and providing
67 medical treatment to victims of sexual offenses shall charge the victim for the
68 forensic examination. For appropriate medical provider charges related to the
69 medical treatment of victims of sexual offenses, if the victim is an eligible
70 claimant under the crime victims' compensation fund, the appropriate medical
71 provider shall seek compensation under sections 595.010 to 595.075, RSMo.

72 [6. For purposes of this section, the following terms mean:

73 (1) "Appropriate medical provider", any licensed nurse, physician, or
74 physician assistant, and any institution employing licensed nurses, physicians,
75 or physician assistants; provided that such licensed professionals are the only
76 persons at such institution to perform tasks under the provisions of this section;

77 (2) "Evidentiary collection kit", a kit used during a forensic examination
78 that includes materials necessary for appropriate medical providers to gather
79 evidence in accordance with the forms and procedures developed by the attorney
80 general for forensic examinations;

81 (3) "Forensic examination", an examination performed by an appropriate
82 medical provider on a victim of an alleged sexual offense to gather evidence for
83 the evidentiary collection kit;

84 (4) "Medical treatment", the treatment of all injuries and health concerns
85 resulting directly from a patient's sexual assault or victimization.]

595.045. 1. There is established in the state treasury the "Crime Victims'
2 Compensation Fund". A surcharge of seven dollars and fifty cents shall be
3 assessed as costs in each court proceeding filed in any court in the state in all
4 criminal cases including violations of any county ordinance or any violation of
5 criminal or traffic laws of the state, including an infraction and violation of a

6 municipal ordinance; except that no such fee shall be collected in any proceeding
7 in any court when the proceeding or the defendant has been dismissed by the
8 court or when costs are to be paid by the state, county, or municipality. A
9 surcharge of seven dollars and fifty cents shall be assessed as costs in a juvenile
10 court proceeding in which a child is found by the court to come within the
11 applicable provisions of subdivision (3) of subsection 1 of section 211.031, RSMo.

12 2. Notwithstanding any other provision of law to the contrary, the moneys
13 collected by clerks of the courts pursuant to the provisions of subsection 1 of this
14 section shall be collected and disbursed in accordance with sections 488.010 to
15 488.020, RSMo, and shall be payable to the director of the department of revenue.

16 3. The director of revenue shall deposit annually the amount of two
17 hundred fifty thousand dollars to the state forensic laboratory account
18 administered by the department of public safety to provide financial assistance
19 to defray expenses of crime laboratories if such analytical laboratories are
20 registered with the federal Drug Enforcement Agency or the Missouri department
21 of health and senior services. Subject to appropriations made therefor, such
22 funds shall be distributed by the department of public safety to the crime
23 laboratories serving the courts of this state making analysis of a controlled
24 substance or analysis of blood, breath or urine in relation to a court proceeding.

25 4. **Notwithstanding any other provision of law to the contrary,**
26 **money in the crime victims' compensation fund may be deposited into**
27 **the sexual offense forensic examination compensation fund created**
28 **under section 595.107.**

29 5. The remaining funds collected under subsection 1 of this section shall
30 be denoted to the payment of an annual appropriation for the administrative and
31 operational costs of the office for victims of crime and, if a statewide automated
32 crime victim notification system is established pursuant to section 650.310,
33 RSMo, to the monthly payment of expenditures actually incurred in the operation
34 of such system. Additional remaining funds shall be subject to the following
35 provisions:

36 (1) On the first of every month, the director of revenue or the director's
37 designee shall determine the balance of the funds in the crime victims'
38 compensation fund available to satisfy the amount of compensation payable
39 pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055;

40 (2) **On September 1, 2008, and on the first of each month, the**
41 **director or the director's designee may deposit money from the crime**

42 **victims' compensation fund into the sexual offense forensic**
43 **examination compensation fund as created under section 595.107 before**
44 **distributing and depositing the remaining money as required by**
45 **subdivision (3) of this subsection;**

46 (3) Beginning on September 1, 2004, and on the first of each month, the
47 director of revenue or the director's designee shall deposit fifty percent of the
48 balance of funds available to the credit of the crime victims' compensation fund
49 and fifty percent to the services to victims' fund established in section 595.100.

50 [5.] 6. The director of revenue or such director's designee shall at least
51 monthly report the moneys paid pursuant to this section into the crime victims'
52 compensation fund and the services to victims fund to the [division of workers'
53 compensation and the] department of public safety[, respectively].

54 [6.] 7. The moneys collected by clerks of municipal courts pursuant to
55 subsection 1 of this section shall be collected and disbursed as provided by
56 sections 488.010 to 488.020, RSMo. Five percent of such moneys shall be payable
57 to the city treasury of the city from which such funds were collected. The
58 remaining ninety-five percent of such moneys shall be payable to the director of
59 revenue. The funds received by the director of revenue pursuant to this
60 subsection shall be distributed as follows:

61 (1) On the first of every month, the director of revenue or the director's
62 designee shall determine the balance of the funds in the crime victims'
63 compensation fund available to satisfy the amount of compensation payable
64 pursuant to sections 595.010 to 595.075, excluding sections 595.050 and 595.055;

65 (2) **On September 1, 2008, and on the first of each month, the**
66 **director or the director's designee may deposit money from the crime**
67 **victims' compensation fund into the sexual offense forensic**
68 **examination compensation fund, as created under section 595.107**
69 **before distributing and depositing the remaining money as required by**
70 **subdivision (3) of this subsection;**

71 (3) Beginning on September 1, 2004, and on the first of each month the
72 director of revenue or the director's designee shall deposit fifty percent of the
73 balance of funds available to the credit of the crime victims' compensation fund
74 and fifty percent to the services to victims' fund established in section 595.100.

75 [7.] 8. These funds shall be subject to a biennial audit by the Missouri
76 state auditor. Such audit shall include all records associated with crime victims'
77 compensation funds collected, held or disbursed by any state agency.

78 **[8.] 9.** In addition to the moneys collected pursuant to subsection 1 of
79 this section, the court shall enter a judgment in favor of the state of Missouri,
80 payable to the crime victims' compensation fund, of sixty-eight dollars upon a plea
81 of guilty or a finding of guilt for a class A or B felony; forty-six dollars upon a
82 plea of guilty or finding of guilt for a class C or D felony; and ten dollars upon a
83 plea of guilty or a finding of guilt for any misdemeanor under Missouri law except
84 for those in chapter 252, RSMo, relating to fish and game, chapter 302, RSMo,
85 relating to drivers' and commercial drivers' license, chapter 303, RSMo, relating
86 to motor vehicle financial responsibility, chapter 304, RSMo, relating to traffic
87 regulations, chapter 306, RSMo, relating to watercraft regulation and licensing,
88 and chapter 307, RSMo, relating to vehicle equipment regulations. Any clerk of
89 the court receiving moneys pursuant to such judgments shall collect and disburse
90 such crime victims' compensation judgments in the manner provided by sections
91 488.010 to 488.020, RSMo. Such funds shall be payable to the state treasury and
92 deposited to the credit of the crime victims' compensation fund.

93 **[9.] 10.** The clerk of the court processing such funds shall maintain
94 records of all dispositions described in subsection 1 of this section and all
95 dispositions where a judgment has been entered against a defendant in favor of
96 the state of Missouri in accordance with this section; all payments made on
97 judgments for alcohol-related traffic offenses; and any judgment or portion of a
98 judgment entered but not collected. These records shall be subject to audit by the
99 state auditor. The clerk of each court transmitting such funds shall report
100 separately the amount of dollars collected on judgments entered for
101 alcohol-related traffic offenses from other crime victims' compensation collections
102 or services to victims collections.

103 **[10.] 11.** The department of revenue shall maintain records of funds
104 transmitted to the crime victims' compensation fund by each reporting court and
105 collections pursuant to subsection 16 of this section and shall maintain separate
106 records of collection for alcohol-related offenses.

107 **[11.] 12.** The state courts administrator shall include in the annual
108 report required by section 476.350, RSMo, the circuit court caseloads and the
109 number of crime victims' compensation judgments entered.

110 **[12.] 13.** All awards made to injured victims under sections 595.010 to
111 595.105 and all appropriations for administration of sections 595.010 to 595.105,
112 except sections 595.050 and 595.055, shall be made from the crime victims'
113 compensation fund. Any unexpended balance remaining in the crime victims'

114 compensation fund at the end of each biennium shall not be subject to the
115 provision of section 33.080, RSMo, requiring the transfer of such unexpended
116 balance to the ordinary revenue fund of the state, but shall remain in the crime
117 victims' compensation fund. In the event that there are insufficient funds in the
118 crime victims' compensation fund to pay all claims in full, all claims shall be paid
119 on a pro rata basis. If there are no funds in the crime victims' compensation
120 fund, then no claim shall be paid until funds have again accumulated in the crime
121 victims' compensation fund. When sufficient funds become available from the
122 fund, awards which have not been paid shall be paid in chronological order with
123 the oldest paid first. In the event an award was to be paid in installments and
124 some remaining installments have not been paid due to a lack of funds, then
125 when funds do become available that award shall be paid in full. All such awards
126 on which installments remain due shall be paid in full in chronological order
127 before any other postdated award shall be paid. Any award pursuant to this
128 subsection is specifically not a claim against the state, if it cannot be paid due to
129 a lack of funds in the crime victims' compensation fund.

130 [13.] 14. When judgment is entered against a defendant as provided in
131 this section and such sum, or any part thereof, remains unpaid, there shall be
132 withheld from any disbursement, payment, benefit, compensation, salary, or other
133 transfer of money from the state of Missouri to such defendant an amount equal
134 to the unpaid amount of such judgment. Such amount shall be paid forthwith to
135 the crime victims' compensation fund and satisfaction of such judgment shall be
136 entered on the court record. Under no circumstances shall the general revenue
137 fund be used to reimburse court costs or pay for such judgment. The director of
138 the department of corrections shall have the authority to pay into the crime
139 victims' compensation fund from an offender's compensation or account the
140 amount owed by the offender to the crime victims' compensation fund, provided
141 that the offender has failed to pay the amount owed to the fund prior to entering
142 a correctional facility of the department of corrections.

143 [14.] 15. All interest earned as a result of investing funds in the crime
144 victims' compensation fund shall be paid into the crime victims' compensation
145 fund and not into the general revenue of this state.

146 [15.] 16. Any person who knowingly makes a fraudulent claim or false
147 statement in connection with any claim hereunder is guilty of a class A
148 misdemeanor.

149 [16.] 17. Any gifts, contributions, grants or federal funds specifically

150 given to the [division] **department** for the benefit of victims of crime shall be
151 credited to the crime victims' compensation fund. Payment or expenditure of
152 moneys in such funds shall comply with any applicable federal crime victims'
153 compensation laws, rules, regulations or other applicable federal guidelines.

595.107. 1. There is hereby created in the state treasury the
2 **"Sexual Offense Forensic Examination Compensation Fund", which shall**
3 **consist of funds from the crime victims' compensation fund, state**
4 **general revenue fund, and federal funds. The state treasurer shall be**
5 **the custodian of the fund and may approve disbursements from the**
6 **fund in accordance with sections 30.170 and 30.180, RSMo. The**
7 **department of public safety shall administer the fund, which shall be**
8 **used solely to make payments to appropriate medical providers to**
9 **cover the charges of the forensic examination of persons who may be**
10 **a victim of a sexual offense if:**

11 (1) **The victim or the victim's guardian consents in writing to the**
12 **examination, so as to demonstrate cooperation with law enforcement**
13 **authorities;**

14 (2) **The report of the examination is made on a form approved by**
15 **the attorney general with the advice of the department of health and**
16 **senior services; and**

17 (3) **The report of the examination is filed with the prosecuting**
18 **attorney of the county in which the alleged incident occurred.**

19 **Notwithstanding the provisions of section 33.080, RSMo, to the**
20 **contrary, any moneys remaining in the fund at the end of the biennium**
21 **shall not revert to the credit of the general revenue fund. The state**
22 **treasurer shall invest moneys in the fund in the same manner as other**
23 **funds are invested. Any interest and moneys earned on such**
24 **investments shall be credited to the fund.**

25 **2. The department of public safety shall promulgate rules and**
26 **regulations establishing which procedures performed by appropriate**
27 **medical providers shall qualify for coverage under the sexual offense**
28 **forensic examination compensation fund and establishing the**
29 **reimbursement rates for such procedures. The checklists for**
30 **appropriate medical providers under section 191.225, RSMo, shall be**
31 **used and considered when promulgating the rules and regulations. Any**
32 **rule or portion of a rule, as that term is defined in section 536.010,**
33 **RSMo, that is created under the authority delegated in this section**

34 shall become effective only if it complies with and is subject to all of
35 the provisions of chapter 536, RSMo, and, if applicable, section 536.028,
36 RSMo. This section and chapter 536, RSMo, are nonseverable and if any
37 of the powers vested with the general assembly pursuant to chapter
38 536, RSMo, to review, to delay the effective date, or to disapprove and
39 annul a rule are subsequently held unconstitutional, then the grant of
40 rulemaking authority and any rule proposed or adopted after August
41 28, 2008, shall be invalid and void.

42 3. For the purposes of this section, the following terms shall
43 mean:

44 (1) "Appropriate medical provider", any licensed nurse,
45 physician, or physician assistant, and any institution employing
46 licensed nurses, physicians, or physician assistant; provided that such
47 licensed professionals are the only persons at such institution to
48 perform tasks under the provisions of this section;

49 (2) "Evidentiary collection kit", a kit used during a forensic
50 examination that includes materials necessary for appropriate medical
51 providers to gather evidence in accordance with the forms and
52 procedures developed by the attorney general for forensic
53 examinations;

54 (3) "Forensic examination", an examination performed by an
55 appropriate medical provider on a victim of an alleged offense included
56 under chapter 566, RSMo, to gather evidence for the evidentiary
57 collection kit;

58 (4) "Medical treatment", the treatment of all injuries and health
59 concerns resulting directly from a patient's sexual assault or
60 victimization.

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